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8

9 **UNITED STATES DISTRICT COURT**
10 **CENTRAL DISTRICT OF CALIFORNIA, WESTERN DIVISION**
11

12 CORY SPENCER, an individual;
13 DIANA MILENA REED, an
individual; and COASTAL
14 PROTECTION RANGERS, INC., a
California non-profit public benefit
15 corporation;

Plaintiffs,

16 v.

17 LUNADA BAY BOYS; THE
18 INDIVIDUAL MEMBERS OF THE
LUNADA BAY BOYS, including but
19 not limited to SANG LEE, BRANT
BLAKEMAN, ALAN JOHNSTON
20 aka JALIAN JOHNSTON, MICHAEL
RAE PAPAYANS, ANGELO
21 FERRARA, FRANK FERRARA,
22 CHARLIE FERRARA, and N.F.;
CITY OF PALOS VERDES
23 ESTATES; CHIEF OF POLICE
JEFF KEPLEY, in his representative
24 capacity; and DOES 1 – 10,

25 Defendants.
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Case No. 2:16-cv-02129-SJO-RAO

NOTICE OF MOTION AND MOTION
BY DEFENDANT ALAN JOHNSTON
TO DISMISS FOR LACK OF
SUBJECT MATTER JURISDICTION;
MEMORANDUM OF POINTS AND
AUTHORITIES

[Fed. Rules Civ. Proc. Rule 12(b)(1)]

Date: July 25, 2016
Time: 10:00am
Place: Courtroom No. 1
Second Floor
312 North Spring Street
Los Angeles, CA 90012

[Proposed Order Lodged Herewith]

Hon. S. James Otero
Courtroom No. 1

1 TO ALL PARTIES AND THEIR COUNSEL OF RECORD:

2 PLEASE TAKE NOTICE that on July 25, 2016, at 10:00 a.m., or as
3 soon thereafter as the matter may be heard by the Hon. S. James Otero,
4 United States District Court Judge, in Courtroom No. 1 of the above-
5 indicated United States District Court, located at 312 North Spring Street,
6 Second Floor, Los Angeles, California 90012, Defendant ALAN JOHNSTON
7 will and hereby does move the Court to dismiss this action pursuant to Rule
8 12(b)(1) of the Federal Rules of Civil Procedure due to lack of subject matter
9 jurisdiction.

10 This Motion is made on the grounds that the Plaintiffs bear the burden
11 of establishing federal subject matter jurisdiction. *Kokkonen v. Guardian Life*
12 *Ins. Co. of America*, 511 U.S. 375, 376-378 (1994); *In re Wilshire Courtyard*,
13 729 F.3d 1279, 1284 (9th Cir. 2013).

14 Plaintiffs assert “admiralty” jurisdiction over Defendant Alan Johnston
15 and other Individual Defendants. The Complaint, however, does not allege
16 activity that has a potentially disruptive impact on maritime commerce or a
17 substantial relationship to traditional maritime activity. *Jerome B. Grubart,*
18 *Inc. v. Great Lakes Dredge & Dock Co.*, 513 U.S. 527, 534 (1995).

19 The Complaint also asserts supplemental jurisdiction over California
20 statutory and tort claims against the Individual Defendants, including
21 Defendant Johnston. The Court should not exercise supplemental
22 jurisdiction over these claims, as they substantially predominate over the
23 alleged federal claims. 28 U.S.C. § 1367(c)(2).

24 This Motion is made following the conference of counsel pursuant to
25 Local Rule 7-3 which took place on June 1, 2016.

26 This Motion is based upon and supported by this Notice, the attached
27 Memorandum of Points and Authorities, the concurrently lodged proposed
28

1 order, the Complaint on file herein, and on such other evidence or argument
2 as may be presented at or before the hearing.

3 Defendant Johnson also hereby serves notice that he joins in the
4 motions to dismiss of other similarly situated individual Defendants. "It is
5 permissible for a party to adopt the motion of another party when the facts
6 between the parties are essentially the same and the adoption would
7 promote judicial efficiency." *Vazquez v. Central States Joint Bd.*, 547
8 F.Supp.2d 833, 867. (N.D.Ill. 2008).

9 DATED: June 16, 2016

Law Offices of J. Patrick Carey

11 By: s/J. Patrick Carey
12 J. Patrick Carey
13 Attorney for Defendant
14 ALAN JOHNSTON
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MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION

This is an action regarding alleged State beach “localism.” Plaintiffs Cory Spencer, Diana Milena Reed, and Coastal Protection Rangers, Inc., allege that City officials and Police do not adequately enforce state laws. Further, Plaintiffs allege that the actions of the individual named defendants, including Defendant Johnston, constitute a public nuisance within the meaning of California *Civil Code* §§ 3479, 3480 such that the defendants and others make up a “criminal street gang” within the meaning of California *Penal Code* § 186.22.

Plaintiffs assert 42 U.S.C. § 1983 claims against the City and the Police, alleging the City and the Police have “engaged in unlawful municipal exclusion [.]” Plaintiffs seek declaratory relief and an “injunction requiring” the City and the Police to “investigate complaints ... and prosecute these complaints as appropriate....” Complaint, pp. 30-31, ¶¶ 65, 69; p. 41, ¶¶ 7, 8.

The Complaint also names individual Defendants, including Defendant Alan Johnston. These individual Defendants allegedly make up a “criminal street gang” referred to as the “Lunada Bay Boys.” As against these individual Defendants – including Defendant Johnston – the Complaint asserts “admiralty” jurisdiction and supplemental jurisdiction over state law claims, including claims for alleged assault, battery, and negligence.

Plaintiffs bear the burden of establishing federal subject matter jurisdiction. The Complaint does not allege activity that has a disruptive impact on maritime commerce or a substantial relationship to traditional maritime activity. *Jerome B. Grubart, Inc. v. Great Lakes Dredge & Dock Co.*, 513 U.S. 527, 534 (1995).

1 The Complaint also asserts supplemental jurisdiction over California
 2 statutory and tort claims against the Individual Defendants, including
 3 Defendant Johnston. The Court should not exercise supplemental
 4 jurisdiction over these claims, as they substantially predominate over the
 5 alleged federal claims. 28 U.S.C. § 1367(c)(2).

6 **II. BRIEF FACTS**

7 **A. Plaintiffs Assert State Law Claims Regarding State Beach** 8 **Access**

9 The Complaint alleges “localism” at Lunada Bay, a California State
 10 beach in the City of Palos Verdes Estates. “Localism is a territorial practice
 11 whereby resident surfers attempt to exclude nonresident beachgoers and
 12 surfers through threats, intimidation, and violence.” Plaintiffs assert that a
 13 group of individuals, sued herein as the “Lunada Bay Boys,” are an
 14 unincorporated association or a “criminal street gang” under California *Penal*
 15 *Code* § 186.22(f). Complaint, ¶¶ 16, 17.

16 Plaintiffs allege that the City of Palos Verdes Estates and the City’s
 17 Police Department do not prevent the alleged unlawful activity. As against
 18 Defendants Palos Verdes Estates and Police Chief Kepley, the Complaint
 19 asserts jurisdiction pursuant to 42 U.S.C. § 1983, and the Complaint asserts
 20 causes of action for equal protection and privileges and immunities under 42
 21 U.S.C. § 1983. The Complaint asks the Court to “declare” that the City and
 22 the Police have “engaged in unlawful municipal exclusion,” and the Plaintiffs
 23 ask the Court to issue an “injunction requiring” the City and the Police to
 24 “investigate complaints ... and prosecute these complaints as appropriate
 25” Complaint, pp. 30-31, ¶¶ 65, 69; p. 41, ¶¶ 7, 8.

26 Plaintiffs assert the following State law causes of action against the
 27 Individual Defendants, including Defendant Johnston:

- 1 • State law claim against the “Lunada Bay Boys” and Individual
- 2 Defendants under California’s Bane Act, California *Civil Code* §
- 3 52.1(b).
- 4 • State law “Public Nuisance” claim against the “Lunada Bay Boys”
- 5 and Individual Defendants under California *Civil Code* §§ 3479,
- 6 3480.
- 7 • State law claim against all Defendants under the California Coastal
- 8 Act, California *Public Resources Code* §§ 30000 *et seq.*, and the
- 9 Municipal Code for Palos Verdes Estates. In addition to the
- 10 allegations regarding blocked access, the Complaint alleges the
- 11 improper construction of “unpermitted developments” and/or a
- 12 “structure.” Complaint, ¶¶ 76-81.
- 13 • State law “Assault” claim against the “Lunada Bay Boys” and the
- 14 Individual Defendants.
- 15 • State law “Battery” claim against the “Lunada Bay Boys” and the
- 16 Individual Defendants.
- 17 • State law “Negligence” claim against “Lunada Bay Boys” and the
- 18 Individual Defendants.

19 **B. Plaintiffs Assert Admiralty and Supplemental Jurisdiction**

20 As to the “Lunada Bay Boys” and the Individual Defendants, including

21 Defendant Johnston, the Complaint asserts “admiralty” jurisdiction under 28

22 U.S.C. § 1333 and Article III, Section 2 of the U.S. Constitution. The

23 Complaint also asserts 28 U.S.C. § 1367 supplemental jurisdiction over the

24 California statutory and tort claims. Complaint, ¶¶ 11, 12.

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1 III. ARGUMENT

2 A. Plaintiffs Have the Burden to Prove Subject Matter 3 Jurisdiction

4 A party may move to dismiss based on a lack of subject-matter
5 jurisdiction. *Federal Rules of Civil Procedure*, Rule 12(b)(1). “[F]ederal
6 courts have an independent obligation to ensure that they do not exceed the
7 scope of their jurisdiction, and therefore they must raise and decide
8 jurisdictional questions” *Henderson ex rel. Henderson v. Shinseki*, 562
9 U.S. 428, 434 (2011).

10 Plaintiffs bear the burden of establishing federal subject matter
11 jurisdiction. *Kokkonen v. Guardian Life Ins. Co. of America*, 511 U.S. 375,
12 376-378 (1994); *In re Wilshire Courtyard*, 729 F.3d 1279, 1284 (9th Cir.
13 2013).

14 B. The Complaint Does Not Allege Traditional Maritime Activity

15 In regard to admiralty jurisdiction, the Supreme Court has stated:

16 [A] party seeking to invoke federal admiralty jurisdiction pursuant to 28
17 U.S.C. § 1333(1) over a tort claim must satisfy conditions both of
18 location and of connection with maritime activity. A court applying the
19 location test must determine whether the tort occurred on navigable
20 water or whether injury suffered on land was caused by a vessel on
21 navigable water. The connection test raises two issues. A court, first,
22 must “assess the general features of the type of incident involved,” to
23 determine whether the incident has “a potentially disruptive impact on
24 maritime commerce,” Second, a court must determine whether “the
25 general character” of the “activity giving rise to the incident” shows a
26 ‘substantial relationship to traditional maritime activity.’ [Citations
27 omitted.] *Jerome B. Grubart, Inc. v. Great Lakes Dredge & Dock Co.*,

1 513 U.S. 527, 534 (1995) (quoting *Sisson v. Ruby*, 497 U.S. 358, 364-
2 365 (1990)).

3 The Complaint here does not allege traditional maritime activity.

4 **C. The Court Should Not Exercise Supplemental Jurisdiction**

5 The Court may decline to exercise supplemental jurisdiction if the
6 State law “claim substantially predominates” over the alleged federal claims
7 or if there are other “compelling reasons for declining jurisdiction.” 28 U.S.C.
8 § 1367(c)(2), (c)(4). As the Supreme Court has stated:

9 [I]f it appears that the state issues substantially predominate, whether
10 in terms of proof, of the scope of the issues raised, or of the
11 comprehensiveness of the remedy sought, the state claims may be
12 dismissed without prejudice and left for resolution to state tribunals.

13 * * * [¶] ... recognition of a federal court’s wide latitude to decide
14 ancillary questions of state law does not imply that it must tolerate a
15 litigant’s effort to impose upon it what is in effect only a state law case.
16 Once it appears that a state claim constitutes the real body of a case,
17 to which the federal claim is only an appendage, the state claim may
18 fairly be dismissed. *United Mine Workers of Am. v. Gibbs*, 383 U.S.
19 715, 726-27 (1966).

20 The asserted federal claims here are causes of action against the City
21 and the Police for alleged equal protection and privileges and immunities
22 violations under 42 U.S.C. § 1983. The Complaint asks the Court to
23 “declare” that the City and the Police have “engaged in unlawful municipal
24 exclusion,” and the Plaintiffs ask the Court to issue an “injunction requiring”
25 the City and the Police to “investigate complaints ... and prosecute these
26 complaints as appropriate” Complaint, pp. 30-31, ¶¶ 65, 69; p. 41, ¶¶ 7,
27 8.

1 These federal claims are only appendages to the State law causes of
2 action:

- 3 • Bane Act claim under California *Civil Code* § 52.1(b).
- 4 • Public Nuisance claim under California *Civil Code* §§ 3479, 3480.
- 5 • Coastal Act claims under California *Public Resources Code*
6 §§30000 *et seq.*, and the Municipal Code for Palos Verdes Estates.
- 7 In addition to the allegations regarding blocked access, the
8 Complaint alleges the building of “unpermitted developments”
9 and/or a “structure.” Complaint, ¶¶ 76-81.
- 10 • State law claims for alleged Assault, Battery, and Negligence.

11 Plaintiffs will have to prove these claims to support or establish the federal
12 claims.

13 Moreover, questions of fact will predominate as to each and every
14 Individual Defendant, thus suggesting mini-trials of each alleged count
15 against each Defendant.

16 **D. The Public Nuisance and Street Gang Statutes Provide Law**
17 **Enforcement with State Court Relief**

18 California *Civil Code* §§ 3479, 3480 and California *Penal Code* §
19 186.22 provide a further reason to decline supplemental jurisdiction. These
20 sections provide relief for law enforcement at the state and city level seeking
21 injunctive relief against declared “criminal street gangs” and specific targeted
22 individuals within those gangs. These injunctions are brought by either the
23 District Attorney’s Office or the City Attorney’s Office in state court working in
24 conjunction with state and city law enforcement agencies.

25 In order to begin the process for providing injunctive relief, the District
26 Attorney or City Attorney must first establish that a “criminal street gang”
27 exists within the meaning of California *Penal Code* § 186.22(f) such that the
28

1 group has a common identifying name or symbol and whose primary
 2 activities are the commission of state crimes listed in Penal Code §
 3 186.22(e), including but not limited to robbery, shooting at an inhabited
 4 dwelling from a vehicle, arson, burglary, rape, carjacking, kidnapping,
 5 torture, and murder.

6 The California public nuisance and criminal street gang statutes are
 7 law enforcement tools. They are not intended to be enforced by private
 8 citizens in federal civil litigation. Questions regarding proof of the elements
 9 of alleged membership in an alleged “criminal street gang” call for
 10 specialized inquiry by state law enforcement and prosecutorial personnel,
 11 not federal civil court determination.

12 **E. Defendant Johnston Joins other Defendants’ Motions to**
 13 **Dismiss**

14 Defendant Johnston joins in the motions to dismiss of other Individual
 15 Defendants. “It is permissible for a party to adopt the motion of another
 16 party when the facts between the parties are essentially the same and the
 17 adoption would promote judicial efficiency.” *Vazquez v. Central States Joint*
 18 *Bd.*, 547 F.Supp.2d 833, 867. (N.D.Ill. 2008).

19 **IV. CONCLUSION**

20 Plaintiffs bear the burden of establishing federal subject matter
 21 jurisdiction over the Individual Defendants, including Defendant Johnston.

22 There is no admiralty jurisdiction. The Complaint does not allege
 23 activity that has a disruptive impact on maritime commerce or a substantial
 24 relationship to traditional maritime activity. *Jerome B. Grubart, Inc. v. Great*
 25 *Lakes Dredge & Dock Co.*, 513 U.S. 527, 534 (1995).

26 The Court should not exercise supplemental jurisdiction over the State
 27 law causes of action against the Individual Defendants, including Defendant
 28

1 Johnston. The State law causes of action substantially predominate over
2 the alleged federal claims, and will require mini-trials on State law issues as
3 to each alleged count against each alleged Defendant.

4 DATED: June 16, 2016

Law Offices of J. Patrick Carey

6 By: s/J. Patrick Carey

7 J. Patrick Carey
8 Attorney for Defendant
9 ALAN JOHNSTON
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